

**Short questionnaire**

Therefore, States are respectfully requested to provide responses to the following questions which relate to the recognition in one State of a domestic adoption granted in another State:

<b>Name of State:</b>	Australia
<b><u>Information for follow-up purposes</u></b>	
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#### **A. RECOGNITION IN YOUR STATE OF DOMESTIC ADOPTIONS GRANTED PREVIOUSLY IN OTHER STATES**

##### ***The law and procedure in your State***

1. Please briefly outline the **law** (legislation or other rules) in your State concerning the recognition of a domestic adoption granted previously in another State.

Each of Australia's state and territories has its own legislation governing domestic and intercountry adoption within its jurisdiction:

##### New South Wales

- Adoption Act 2000
- Adoption Regulation 2003

New South Wales legislation can be viewed at:  
<http://www.legislation.nsw.gov.au>

##### Victoria

- Adoption Act 1984
- Adoption Regulations 2008

Victorian legislation can be viewed at:  
<http://www.legislation.vic.gov.au>

##### Queensland

- Adoption Act 2009
- Adoption Regulation 2009

Queensland legislation can be viewed at:  
<http://www.legislation.qld.gov.au/>

##### Western Australia

- Adoption Act 1994
- Adoption Regulations 1995
- Adoption Rules 1995

Western Australian legislation can be viewed at:  
<http://www.slp.wa.gov.au/legislation/statutes.nsf/default.html>

##### South Australia

- Adoption Act 1988
- Adoption Regulations 2004

South Australian legislation can be viewed at:  
<http://www.legislation.sa.gov.au/>

#### Tasmania

- Adoption Act 1988
- Adoption Regulations 2006

Tasmanian legislation can be viewed at:  
<http://www.thelaw.tas.gov.au/>

#### Australian Capital Territory

- Adoption Act 1993
- Adoption Regulation 1993

Australian Capital Territory legislation can be viewed at:  
<http://www.legislation.act.gov.au/>

#### Northern Territory

- Adoption of Children Act 1994
- Adoption of Children Regulations 1994

Northern Territory legislation can be viewed at:  
[http://www.dcm.nt.gov.au/strong\\_service\\_delivery/supporting\\_government/current\\_northern\\_territory\\_legislation\\_database](http://www.dcm.nt.gov.au/strong_service_delivery/supporting_government/current_northern_territory_legislation_database)

In particular, please specify whether your State applies different rules to the recognition of domestic adoptions made in certain States or regions and, if so, why.

Australia's states and territories have provisions to automatically recognise adoptions made in other Australian jurisdictions and in New Zealand. The majority of Australian states and territories also have provisions in their legislation that allow the automatic recognition of adoptions occurring in Convention countries. A number of jurisdictions also have provisions relating to 'prescribed' countries - these are usually countries Australia has intercountry adoption programs with, but are not signatories to the Hague Convention.

2. Please briefly outline the **procedure** which must be followed in your State by persons seeking the recognition of a domestic adoption granted previously in another State.

As noted above, adoptions occurring in Convention countries are treated differently to adoptions undertaken in non-Convention countries by the majority of Australia's states and territories.

As a general rule, adoptions undertaken in Convention countries are automatically recognised, as long as certain requirements set out in the legislation of the state or territory has been complied with (for example, the adoption confers full parental rights on the adoptive parents).

For adoptions undertaken in non-Convention countries, most jurisdictions have a presumption that a foreign adoption order will be considered valid if it meets the criteria set out in legislation (for example, the adoption order was made in accordance with the law of that country and confers full parental rights on the adoptive parents).

Adoptive parents in all jurisdictions can apply to the relevant Court in their state or territory of residence to obtain a declaration of validity. The Court will determine the validity of the adoption based on the criteria set out in the state or territory legislation (for example, the adoption will not be declared valid if the adoption process involved a denial of natural justice).

In particular, please specify what legal or administrative steps are required for recognition.

Where recognition is automatic, or there is a presumption towards treating the foreign adoption order as valid, no further steps need to be taken.

However, if adoptive parents wish to obtain a declaration of validity, they will lodge an

application with the relevant Court seeking the declaration.

3. What is the competent authority in your State for such matters?

Each of the states and territories has a Central Authority under the Hague Convention. In most jurisdictions, the department with responsibility for the Hague Convention functions is the competent authority for these matters.

However, in other jurisdictions, the competent authority is deemed to be the Court that can issue the declaration of validity.

### **Cases which have arisen in your State**

4. Has your State been asked to recognise domestic adoptions granted previously in other States? If so:

- (a) How many such cases have arisen in the past year?

The Australian states and territories were not aware of cases arising in their jurisdictions within the last 12 months.

Past three years?

One of Australia's states and territories had an application to recognise an adoption made in a non-Convention country.

The other states and territories were not aware of cases arising in their jurisdiction.

- (b) In such cases, why was recognition of the domestic adoption sought?

This matter was an application by the adoptive parents for a declaration of validity under the relevant Act in relation to an 'adoption' made in United Arab Emirates. The UAE is not a party to the Convention and is not a prescribed country.

- (c) What type of document was presented for recognition?

A "Family Fostering Agreement (Special Cases)" and a "Custody Agreement of a Foundling" between the applicants and the Zayed Higher Organization for Humanitarian Care, Special Needs & Minors Affairs ("ZHO").

- (d) Was recognition permitted?

The Court found the adoption could not be recognised.

- (e) In cases where recognition was refused, what were the reasons?

Recognition was refused because under the law of the UAE, the arrangements established a relationship under which the applicants had full parental responsibility for, but did not legally become the parents of, the child. The "adoption" did not, under the UAE law, place the adoptive parents generally in the position of parents, as was required by the legislation of the Australian state or territory.

In particular, have there been any cases in which recognition was refused by your State on the basis that jurisdiction had been inappropriately assumed by the foreign authority?

The Australian states and territories are not aware of any instances of this.

- (f) Where recognition was refused, what actions, if any, were taken with respect to the status of the child?

In the case outlined above, the Court granted leave for the applicants to make an application for an adoption under the the relevant Act. An adoption order was granted.

- (g) Has there been any cross-border co-operation / communication between your State and any State(s) which granted the adoption(s) in these cases?

No.

5. In your State's experience, do (some or many) families with an adopted child move to your State without having the child's adoption formally recognised in your State?

The Australian states and territories do not have any data on this.

Does this create any problems for the family?

N/A.

## **B. RECOGNITION IN ANOTHER STATE OF DOMESTIC ADOPTIONS GRANTED PREVIOUSLY IN YOUR STATE**

### ***The law and procedure in your State***

6. In relation to the granting of domestic adoptions in your State:

- (a) Are any special rules or procedures followed when a case involving a domestic adoption has an international element (*e.g.*, it involves a foreign national child and / or foreign national prospective adoptive parents, despite the fact that they are all habitually resident in your State)?

In all of Australia's states and territories, parties to a domestic adoption must be habitually resident in Australia.

All states and territories require at least one of the prospective adoptive parents to be an Australian citizen. In cases where a single person is adopting, they must be an Australian citizen.

If the prospective adoptive parents or the child is not habitually resident in Australia, the adoption will be considered an intercountry adoption and the Convention process will apply.

- (b) What type of document is issued for domestic adoptions granted in your State?

An adoption order will be granted by the relevant Court. In some jurisdictions this is the Supreme Court, in others it is the Children's Court, the Youth Court or the state's Family Court.

The adoption order will also allow the adoptee to obtain a new birth certificate.

7. Are there any special rules or procedures which are followed when your State is made aware that another State has been requested to recognise a domestic adoption originating from your State?

No.

### ***Cases which have arisen involving your State***

8. Are you aware of situations in which recognition has been sought in other States of domestic adoptions granted in your State?

Australian states and territories are not aware of any instances where recognition of an adoption order made in their jurisdiction has been sought in another country.

If so:

- (a) How many such cases have arisen in the past year of which you are aware?

N/A

Past three years?

N/A

- (b) Which competent authorities were addressed in your State? And in the other State(s)?

N/A

- (c) In such cases, why was recognition of the domestic adoption sought?

N/A

- (d) Was recognition permitted by the other State(s)?

N/A

- (e) In cases where recognition was refused, what were the reasons?

N/A

Have you ever had a case where the grounds upon which your State assumed jurisdiction to grant the domestic adoption were challenged by the foreign State?

N/A

- (f) Where recognition was refused, what actions, if any, were taken with respect to the status of the child?

N/A

- (g) Has there been any cross-border co-operation / communication between your State and any State(s) being asked to recognise the adoption in these cases?

N/A

### **C. PRACTICAL PROBLEMS REQUIRING ACTION**

9. In light of the information you have provided in both sections above, overall, are there, in your State's experience, practical problems in this area that need resolving at the international level?

The recognition of domestic foreign adoption orders in Australia, or the recognition of Australian domestic adoption orders in foreign countries, does not seem to create any major practical problems for our states and territories.